

TENTATIVE RULINGS for CIVIL LAW and MOTION
October 7, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: **Martin v. Cons**

Case No. CV G 09-1863

Hearing Date: **October 7, 2009** **Department Fifteen** **9:00 a.m.**

The petitioner and the minor are directed to appear or to show good cause why the petitioner and minor should not be required to appear. (Cal. Rules of Court, rule 7.952.) If the petitioner and the minor choose to show good cause, they should do so by filing a declaration before the hearing setting forth the facts supporting good cause. If the parties fail to appear at the hearing and the Court has not excused their personal appearance, the petition will be denied without prejudice. No request for a hearing is required.

TENTATIVE RULING

Case: **Ramos v. St. John et al.**

Case No. CV PO 08-3177

Hearing Date: **October 7, 2009** **Department Fifteen** **9:00 a.m.**

Defendant Erick St. John's motion for summary judgment or, in the alternative, summary adjudication is **GRANTED IN PART** as follows:

Defendant's motion for summary adjudication of the cause of action for strict liability under Civil Code section 3342 is **GRANTED**. Plaintiff, a professional dog groomer, is barred from bringing a cause of action for strict liability under Civil Code section 3342 under the veterinarian's rule. (Code Civ. Proc., § 437c; *Priebe v. Nelson* (2006) 39 Cal.4th 1112, 1129-1131; *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850; Undisputed Material Facts 1-3.)

Defendant's motion for summary adjudication of the causes of action for common law strict liability and negligence are **DENIED**. (Code Civ. Proc., § 437c; Additional Undisputed Material Facts ("Plaintiff's AUMF") 1-17.) Plaintiff presented admissible evidence showing that there are triable issues of material facts including: (1) whether Erick and Kristi St. John knew of Hurley's aggressive and dangerous propensities prior to the subject dog bite incident;

(2) the extent of Defendant's comparatively negligence for failing to warn of or for misleading Plaintiff as to Hurley's aggressive and dangerous propensities prior to her grooming Hurley; and (3) whether Plaintiff assumed the risk of injury when she continued to try to hold Hurley on the grooming table after he displayed aggressive behavior toward her and her assistants and bit her. (*Priebe v. Nelson*, supra, 39 Cal.4th at pp. 1115-1116; *Knight v. Jewett* (1992) 3 Cal.4th 296, 308; *Kindrick v. Long Beach Yacht Club* (2008) 167 Cal.App.4th 1252; Plaintiff's AUMF 1-17.)

Defendant Erick St. John's motion for summary judgment is **DENIED**. (Code Civ. Proc., § 437c; Plaintiff's AUMF 1-17.)

Defendant's Request for Judicial Notice is **GRANTED**. (Evid. Code, § 452.)

If no hearing is requested, plaintiff is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

TENTATIVE RULING

Case: **Taylor v. Smith**

Case No. CV UD 09-2262

Hearing Date: **October 7, 2009** **Department Fifteen** **9:00 a.m.**

The demurrer by Austin Smith and Cynthia Martin is **SUSTAINED WITHOUT LEAVE TO AMEND**. The complaint does not allege compliance with Civil Code section 798.55. Even assuming that the 60-day notice required under Civil Code section 798.55 was served on the same date as the 3-day notice required under Civil Code section 798.56, subdivision (e)(1), the instant action is premature. Accordingly, the complaint must be dismissed.

Defendants shall serve a copy of the Court's ruling on the plaintiff by mail by no later than October 9, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Matter of Jestina Vergara**

Case No. CV P2 09-155

Hearing Date: **October 7, 2009** **Department Fifteen** **9:00 a.m.**

The petition to approve the disposition of the proceeds of judgment is **DENIED WITHOUT PREJUDICE**. Petitioner has not provided the name and address of the proposed depository for the settlement funds. (Cal. Rules of Court, rule 7.950(12).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **In re Arturo Vergara**
 Case No. CV P2 09-156

Hearing Date: **October 7, 2009** **Department Fifteen** **9:00 a.m.**

The petition to approve the disposition of the proceeds of judgment is **DENIED WITHOUT PREJUDICE**. Petitioner has not provided the name and address of the proposed depository for the settlement funds. (Cal. Rules of Court, rule 7.950(12).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.